

REMARKS

The Notice of Non-Compliant Amendment mailed September 24, 2007 pointed out a discrepancy in the Response filed July 23, 2007 in that the paragraph on top of page 2 referred to claims 20-29, 32 and 37 as being earlier withdrawn and cancelled, but the listing of claims included claims 20 and 21, noting that they were original claims. The listing of cancelled claims should not have included claims 20 and 21. The paragraph at the top of page 2 above correctly notes that it was claims 22-29, 32 and 37 that were previously withdrawn and are now cancelled.

In the Office Action mailed March 22, 2007, claims 1, 4-11, 13-20, 30, 31 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over PCT Publication No. WO 97/06695 (Hanke). This rejection is respectfully traversed. Claim 1 calls for a jacketed hard candy having a core made of boiled hard candy and an outer layer also made of a boiled hard candy jacketed onto the core so as to cover at least a majority of the core. Further, claim 1 requires that the core and outer layer both contain one or more flavoring and cooling agents, and the level of cooling agents in the outer layer is greater than the level of any cooling agents in the core.

Hanke discloses a confectionary product suitable for the relief of cough and cold symptoms comprising a coolant composition and a flavor composition in distinct and discrete regions of the product. While Hanke, on page 3, states that the product can be in the form of hard and soft candies, it does not disclose a jacketed hard candy as called for in claim 1. While line 22 of page 3 makes reference to "a centre-filled candy or dragee," this is not the same as a jacketed hard candy product. Particularly, there is nothing in Hanke which suggests that the "centre-filled candy" has a hard candy center. There are other references in Hanke to center-filled products, and none of these have a hard candy center jacketed by a boiled hard candy. Page 2, lines 14-15 describe a prior art product with a hard candy outer shell and a powdered centerfill. Page 12, lines 14-17 describes an embodiment of the invention "using centre-filled candies wherein the confectionery product comprises a powdered filling of the flavour or cooling composition and the hard candy coat comprises the other of the flavour or cooling composition." Thus, where specific center-filled products are discussed in Hanke, they

have a powder center filling, and not a hard boiled candy as a core covered by a boiled hard candy jacket. In fact, the Office Action admits that Hanke does not explicitly teach a two layer candy with both a hard candy shell and a hard candy core.

The Office Action points to teachings in Hanke regarding lozenges, which would typically be hard candies. However, lozenges are not typically center-filled, nor are they typically jacketed hard candies. Thus the fact that Hanke discloses a lozenge does not mean that it discloses a jacketed hard candy product.

The Office Action states, on page 6, "Since a preferred embodiment of Hanke is for the two layer center filled candy to be in the form of a lozenge and since a lozenge is defined as dissolving and lubricating when ingested, one of ordinary skill in the art at the time the invention was made would have been motivated to chose the hard candy embodiment as taught by Hanke for the final product." This statement is predicated on the misapplication of comments about one type of confectionery to other types of confectioneries. There is no suggestion that the lozenge embodiment be a two layer center filled candy. While it is true that Hanke discloses products that have a jacket that comprises a coolant and a core with a flavor region, there is no suggestion that these products comprise a jacketed hard candy with a hard candy core and a hard candy jacket. For example, the cited portion of page 10 discusses crystalline coatings on pastille, lozenges or gum. The cited portion of page 12 discusses powder filled candies. Example 2 discusses a medicinal pastille made with a sweetened gelatin mixture.

There are a number of products that could include a hard candy and be within the scope of the claims of Hanke that would not be jacketed hard candies. Hanke requires that a coolant composition and a flavor composition are in discrete regions. A center-filled hard candy with a powder center filling, such as discussed on page 12 of Hanke, could be made with the flavor composition in the hard candy and the coolant composition in the powdered center fill. Page 10 discusses an embodiment that uses a crystalline coating containing the flavor applied on a lozenge. Again, this would not be a jacketed hard candy. A laminated hard candy could also be made with two layers of hard candy, one on top of the other, with a flavor composition in one layer and a coolant composition in the other layer. This hard candy would not be considered a jacketed

hard candy because one layer would only cover one side of the other layer, and not form a jacket around a core.

The Office Action, on page 7, points to the teaching on page 10 of Hanke that "The carrier is typically of the same form and general composition as the cooling composition carriers described above" as teaching that the two regions of the product should be made of the same type of confectionery material. It should be noted that Hanke discloses many different confectionery products. Thus, whether this statement on page 7 would be applicable to all of the different confectionery materials is speculation. There is no reason to believe that this statement would suggest that two hard boiled candies are being used to make a product. With hard boiled candies, if they are deposited one layer on top of another layer, they would have to be deposited very hot in a mold, and the heat would cause a degradation or loss of volatile flavors and some cooling agents.

As noted above, Hanke does not expressly disclose a core made of a boiled hard candy containing one or more flavoring and cooling agents and an outer layer also made of a boiled hard candy and containing one or more flavoring and cooling agents, the outer layer being jacketed onto the core so as to cover at least a majority of the core, as required by claim 1. Since there are embodiments of Hanke that would not fit within the scope of claim 1, Hanke does not inherently disclose the invention of claim 1 either. Further, while Hanke does require the product to have a coolant composition in one region and a flavor composition in another region, there is no disclosure of a jacketed hard candy with the level of cooling agents in the outer layer being greater than the level of any cooling agents in the core, as also required by claim 1. Furthermore, there is no suggestion in Hanke that aspects of the Hanke invention should be applied to confectioneries with a core made of a boiled hard candy and an outer layer also made of a boiled hard candy. Thus claim 1, and claims 4-11, 13-20, 30, 31 and 34 dependent thereon, are not obvious in view of Hanke.

The Office Action points to various teachings in Hanke as meeting the requirements of the dependent claims. However, for the most part, Hanke teaches soft confectionery products, and thus many of the specific disclosures relate to such soft products and not hard candies. For example, the other teachings of Hanke relied upon

in the Office Action as supporting the rejection of dependent claims 4-11, 13-20, 30-31 and 34 would not be applicable to a jacketed hard candy. Thus the other dependent claims are also further patentable over Hanke.

In the March 22, 2007 Office Action, claims 2, 3 and 33 were rejected under 35 U.S.C. § 103(a) as being obvious over Hanke in view of PCT Publication No. 97/03569 (Luhadiya). This rejection is respectfully traversed. Luhadiya discloses a sugar-free hard candy that has a core of material that is hygroscopic and a casing that is substantially non-hygroscopic. Even though the Luhadiya product discloses a core and jacket material, there is no suggestion to use a cooling agent in Luhadiya, or to have the level of any cooling agents in the outer layer be greater than the level of any cooling agents in the core, as required by claim 1. Since Hanke does not disclose a jacketed hard boiled candy, the teachings of Luhadiya are not applicable to Hanke. Thus, claims 2, 3 and 3 are patentable over Hanke and Luhadiya.

In the March 22, 2007 Office Action, claim 12 was rejected under 35 U.S.C. § 103(a) as being obvious over Hanke in view of EP 0431376 (Coia). This rejection is also respectfully traversed. Claim 12 is dependent on claim 1, and thus differs from Hanke for at least the reasons specified above. Coia discloses a hard candy that is made with hydrogenated isomaltulose. However, there is no suggestion of jacketing one boiled hard candy onto another boiled hard candy in Coia. Thus claim 12 is patentable over Hanke and Coia.

In the March 22, 2007 Office Action, claim 21 was rejected under 35 U.S.C. § 103(a) as being obvious over Hanke in view of U.S. Patent No. 4,452,825 (Klacic). This rejection is also respectfully traversed. Claim 21 is dependent on claim 1, and thus differs from Hanke for at least the reasons specified above. Klacic discloses a sorbitol hard candy that is made by depositing in a mold. There is no suggestion of jacketing one boiled hard candy onto another boiled hard candy. Thus claim 21 is patentable over Hanke and Klacic.

In the March 22, 2007 Office Action, claims 35 and 36 were rejected under 35 U.S.C. § 103(a) as being obvious over Hanke in view of page 231 of the publication "New Ingredients in Food Processing" (Linden and Lorient). This rejection is also respectfully traversed. Claims 35 and 36 are dependent on claim 1, and thus differ from

Hanke for at least the reasons identified above. While Linden and Lorient discloses that aspartame is 200 times sweeter than sucrose, there is no suggestion that aspartame be used in a jacketed hard boiled candy. Thus claims 35 and 36 are patentable over Hanke and Linden and Lorient.

In the March 22, 2007 Office Action, claims 1-3, 5-8, 13-16, 18-20, 30, 31, 33 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Luhadiya in view of Hanke. This rejection is respectfully traversed. Luhadiya discloses a sugar free hard candy made by centerfilling depositing technique. The product has a maltitol core and an outer layer made with a material that will not be sticky when exposed to ambient humidity. There is no reason why the teachings of Hanke, to divide the cooling agent and flavor into separate regions, would be applicable to this type of product except by hindsight of the present invention. The Office Action states that one would have been motivated to make the combination in order to gain the benefits of such cooling agents, such as throat soothing properties. However, throat soothing properties would be available regardless of whether the cooling agents and flavor were separated. Since the references are only combined because of impermissible hindsight, the rejection is improper.

In the March 22, 2007 Office Action, claim 21 was rejected under 35 U.S.C. § 103(a) as being obvious over Luhadiya in view of Hanke and Klacik. This rejection is also respectfully traversed. Claim 21 is dependent on claim 1, and thus differs from Luhadiya and Hanke for at least the reasons specified above. Klacik discloses a sorbitol hard candy that is made by depositing in a mold. There is no suggestion in Klacik of using a cooling agent in an outer layer of a product at a higher level than in the core of a product. Thus claim 21 is patentable over Luhadiya, Hanke and Klacik.

In the March 22, 2007 Office Action, claims 1, 4-10, 13-15, 18-20, 30, 31 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,517,205 (Aldrich) in view of Hanke. This rejection is respectfully traversed. Aldrich discloses a hard candy made by codepositing, but does not suggest that flavor and cooling agents should be used in the product, let alone segregated between the different materials in the product. Again, the Office Action rational for combining Aldrich and Hanke is the idea that one would have been motivated to do so for the benefits of

using cooling agents, such as throat soothing properties. However, since throat soothing properties could be achieved by using cooling agents in both the core and the outer layer, there is no reason to have a higher level of cooling agents in the outer layer than in the core as called for in the claims. Thus, it is clear that the rejection is impermissible, based on hindsight, and should be withdrawn

In the March 22, 2007 Office Action, claim 8 was rejected under 35 U.S.C. § 103(a) as being obvious over Aldrich in view of Hanke and Luhadiya. This rejection is also respectfully traversed. Claim 8 is dependent on claim 1, and thus is patentable over Aldrich and Hanke for at least the reasons specified above. As noted above, Luhadiya does not suggest that a cooling agent be used in an outer layer of a product. Thus claim 8 is patentable over Aldrich, Hanke and Luhadiya

In the March 22, 2007 Office Action, claim 11 was rejected under 35 U.S.C. § 103(a) as being obvious over Aldrich in view of Hanke and Coia. This rejection is also respectfully traversed. Claim 11 is dependent on claim 1, and thus differs from Aldrich and Hanke for at least the reasons specified above. Coia discloses a hard candy that is made with hydrogenated isomaltulose. However, there is no suggestion of using a cooling agent in an outer layer of a product at a higher level than in the core of a product. Thus claim 11 is patentable over Aldrich, Hanke and Coia.

In the March 22, 2007 Office Action, claim 12 was rejected under 35 U.S.C. § 103(a) as being obvious over Aldrich in view of Hanke and Luhadiya and further in view of Coia. This rejection is also respectfully traversed. Claim 12 is dependent on claim 1, and thus differs from Aldrich, Hanke and Luhadiya for at least the reasons specified above. Coia discloses a hard candy that is made with hydrogenated isomaltulose. However, there is no suggestion of using a cooling agent in an outer layer of a product at a higher level than in the core of a product. Thus claim 12 is patentable over Hanke and Coia.

In the March 22, 2007 Office Action, claim 21 was rejected under 35 U.S.C. § 103(a) as being obvious over Aldrich in view of Hanke and Klacik. This rejection is also respectfully traversed. Claim 21 is dependent on claim 1, and thus differs from Aldrich and Hanke for at least the reasons specified above. Klacik discloses a sorbitol hard candy that is made by depositing in a mold. There is no suggestion of using a

cooling agent in an outer layer of a product at a higher level than in the core of a product. Thus claim 21 is patentable over Aldrich, Hanke and Klacik.

In the March 22, 2007 Office Action, claims 35 and 36 were rejected under 35 U.S.C. § 103(a) as being obvious over Aldrich in view of Hanke and further in view of Linden and Lorient. This rejection is also respectfully traversed. Claims 36 and 36 are dependent on claim 1, and thus differ from Aldrich and Hanke for at least the reasons identified above. While Linden and Lorient discloses that aspartame is 200 times sweeter than sucrose, there is no suggestion that aspartame be used in a jacketed hard boiled candy. Thus claims 35 and 36 are patentable over Aldrich, Hanke and Linden and Lorient.

The Applicants have made a novel and non-obvious contribution to the art of jacketed hard candy products. The claims at issue distinguish over the cited references and are in condition for allowance. Accordingly, such allowance is now earnestly requested.

Respectfully submitted,

Steven P. Shurtz
Registration No. 31,424
Attorney for Applicants

Date: October 10, 2007
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200
Direct Dial: (801) 333-7906